



**Trillion Partners, Inc.  
9208 Waterford Centre Blvd., Suite 150  
Austin, Texas 78758**

**December 13, 2010**

Federal Communications Commission *Delivered via ECFS & email*  
Attention: Ms. Gina Spade, Deputy Division Chief  
Ms. Erica Myers, Wireline Competition Bureau  
Ms. Dana Bradford, Wireline Competition Bureau

Telecommunications Access Policy Division  
445 12th Street SW  
Washington, DC 20554

CC Docket No 02-6

Re:

Appeal  
School District: Bloomfield School District, Bloomfield, NM  
Funding Year: 2006  
FRN Denied: 1438482  
Form 471 Application Denied: 143262  
Reason for Denial: Gifts and Communications

Dear Gina, Erica and Dana:

On November 3, 2010, Trillion filed a Master Appeal Summary with the FCC on ECFS, as well as provided the Master Appeal Summary to you via E-Mail and in hard copy. In the Master Appeal, Trillion provides the rationale as to why USAC's mass denial of funding is without merit. Please accept this Individual appeal for Bloomfield School District, along with the Master Appeal Summary as the appeal in its totality.

### **Gifts**

USAC alleges that Bloomfield School District received valuable gifts which tainted a fair and open competitive bidding process as the basis for denial of funding. Trillion denies USAC's allegations. In fact and in all instances, the meals, gifts and gratuities that Trillion provided to the applicant were in full compliance with all applicable (FCC, state and local) competitive bidding and procurement requirements at the time. Please also note, in February of 2009, Trillion instituted a Code of Conduct for its employees that prohibits meals, gifts or gratuities of any kind and is stricter than the new rules put in place with the FCC Sixth Report and Order, FCC 10-175.

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The amounts spent on meals or other routine business expenses were trivial and could not have possibly influenced a decision that would ultimately be made by the School Board. Furthermore, no member of the School Board or decision maker received any such expense. The fact is, Trillion invested \$500,000 in order to construct Bloomfield's network providing critical services with a total contract value of \$1,536,700, while the amount of the routine business meals and expenses only amounted to \$247.46\* across the entire district. Both the New Mexico Gift Act and Bloomfield Schools' district policy, both in effect at that time, permit gifts up to \$250.

\* Please note that, of the \$826.61 of receipts presented by USAC, \$579.15 were for expenses not attributable to Bloomfield employees and \$132.29. This includes some expense items provided to USAC totaling \$154.17 that apparently were not categorized correctly in Trillion's original data submission, and \$424.98 of expenses for non-Bloomfield persons at group meals.

Of the \$247.46 total accepted by Bloomfield employees:

- \$183.72 was for lodging and meals associated with a speaking engagement for a Bloomfield employee, Sondra Adams, at the Center for Digital Education Conference that occurred in December of 2005. Ms. Adams devoted time and effort to the preparation of the materials and content of the topic presented, which was designed to benefit those in attendance, not just Trillion. Ms. Adams efforts in undertaking this task far exceeded the value of her hotel room and meal, and cannot be considered a prohibited gratuity under the New Mexico Procurement Code.
- \$17.59 was for a meal in Colorado Springs for Ms. Adams.
- \$46.15 was for flowers sent on January 30, 2006. Per Bloomfield Schools' staff, these flowers were in memory of Superintendent of Bloomfield Schools Harry Hayes, who died on January 27, 2006. His memorial service was held on February 1, 2006.

In summary, this applicant's actions were in full compliance with FCC, state and local procurement guidelines in effect at the time, as described in the Master Appeal Summary. Therefore, the customer's actions did not, in any way whatsoever, improperly affect the competitive bidding process.

### **Communications**

Also, USAC is denying this application on the basis that *"The documentation indicates that Sondra Adams engaged in numerous meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in 07/19/2005 through the award of the 5 year contract to Trillion in 01/29/2006. These discussions were not general marketing discussions, but rather show that you provided Trillion with inside information regarding your needs and details about their procurement process, that Trillion influenced the procurement process by providing input into your requirements regarding WAN and FCC Form 470 to ensure that Trillion would be awarded the contract, and that before the bids were even submitted and the selection made."* Trillion denies USAC's allegations and will refute the communications below.

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## **USAC Alleged Communication Issue:**

**hold**

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**From:** Gary Gaessler  
**Sent:** Tuesday, August 30, 2005 4:38 PM  
**To:** Sondra Adams  
**Cc:** Mark Rammer; Craig Chamrad  
**Subject:** RE: Trillion..Conf call IP Tel -possible times....

**Importance:** High

Hi Sondra:

Please let me know if any of these times work this week to have a brief call with your lead tech, yourself and our IP Tel Engineer and project manager to review your LAN network, i.e. switching, equip, models, hubs, QOS capabilities etc.

This Thursday 1pm or 3pm MTN

Or this Friday, anytime after 10am Mtn.

Thanks,

Gary Gaessler

Regional Sales Manager

Trillion

[www.trillion.net](http://www.trillion.net)

720.519.0030 Direct

303.570.0003 Mobile

720.212.0718 Fax

## **Communication Was Within Rules:**

Trillion is unsure as to what in this communication is of issue. The Trillion employee is requesting of the school district, information regarding the school district's infrastructure. Please note that a Form 470 had not been filed and that the school district was not in a bidding process. As outlined in the Trillion Master Appeal Summary filed November 3, 2010 with the FCC, a service provider is allowed to discuss its product offering with a school district. To better understand how a service provider's technology might fit, a basis for understanding of what technology the school district currently has deployed is very helpful. In this light, any service provider is better able to communicate with the school district exactly how its product offering would fit into that environment.

Also, Trillion attended a recent USAC training held in Dallas. This topic was discussed with a USAC employee at the training. It was re-iterated that a service provider can discuss its product offering with a school district and that school district can share information with a service provider about that district, as long as the school district treats all potential vendors equally and the bid process adheres to state, local and E-Rate program rules. There is no indication that the school district did not treat all potential service providers equally. There is also no indication that the school district did not follow state, local and E-Rate program rules.

As a matter of fact, it has come to the attention of Trillion that USAC only requested the school district to provide all communications that occurred solely with one service provider, that being Trillion. How in the world could USAC determine if the school district

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communicated equally and fairly with all potential service providers, if USAC only requested communications between the district and one service provider?

### **USAC Alleged Communication Issue:**

hold

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From: Gary Gaessler  
Sent: Tuesday, August 30, 2005 11:15 AM  
To: Sondra Adams  
Cc: Roger Clague  
Subject: RE: Trillion follow-up items...470..

Hi Sondra:

Listed below is the 470 language we recommend:

The description for the WAN can be the same for the Voice service as well. The 470 should just say:

Description: Wide Area Network for data and voice

Quantity: District wide

This should work for both the WAN and the Voice service over the WAN.

Make sure you list this as a multi-year agreement or an agreement with voluntary extensions. Please us  
Let me know if and when there is a 470 we can review.

Thanks,

Gary Gaessler

Regional Sales Manager

Trillion

www.trillion.net

720.519.0030 Direct

303.570.0003 Mobile

720.212.0718 Fax

### **Communication Was Within Rules:**

As Trillion discussed in the Master Appeal Summary filed November 3, 2010 with the FCC, a service provider can provide technically neutral guidance to a school district. Also, as pointed out in the Bloomfield Account Summary provided by Trillion to USAC on June 8, 2009, Trillion specifically pointed this communication out to USAC noting the following:

*" 1) The language used in an e-mail titled "RE: Trillion follow-up items..." from Gary Gaessler to Sondra Adams of Bloomfield schools on 8/30/2005. In this string of e-mails, it appears that Gary Gaessler was offering guidance on language that could be used in the creation of the 470 and that the Bloomfield employee asks for examples. This e-mail is followed up with a response from Gary with an e-mail titled "RE: Trillion follow-up items...470..." on the same day in which Gary Gaessler does offer what is technically neutral guidance in regards to the language for the creation of the 470 which is allowed under USAC rules. Although the language is technically neutral and allowable, the communication of this*

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*did not follow Trillion policy as the requirement for communication with any prospect in regards to an E-Rate matter should have been referred to Trillion's E-Rate trained attorney at the time."*

Trillion would point to the USAC Eligible Services list that was in effect at the time. The eligible services list specifically *states "Digital transmission services used to link local networks are commonly called "wide area networks" (WANs)." The Trillion employee is providing a description that is neutral and directly off of the publicly available, and USAC's own, Eligible Services List. Please note that the other terms being Data and Voice are also used throughout the Eligible Services List.*

Ultimately, Bloomfield ignored this language in submitting the 470.

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## **USAC Alleged Communication Issue:**

hold

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**From:** Gary Gaessler  
**Sent:** Monday, August 29, 2005 3:52 PM  
**To:** Sondra Adams  
**Cc:** Roger Clague  
**Subject:** RE: Trillion follow-up items...

Hi Sondra:

Thanks for the info. I will provide some times this week for a conf call with you and your lead tech and my sales engineer.

Also would Wednesday 9/21 AM (earlier the better) work for a meeting with yourself, Randy, Roger and I to review the updated design?

Thanks

Gary

-----Original Message-----

**From:** Sondra Adams [mailto:sadams@bsin.k12.nm.us]  
**Sent:** Sunday, August 28, 2005 4:55 PM  
**To:** Gary Gaessler  
**Subject:** Re: Trillion follow-up items...

I have not been able to file for the 470 with the start of school and the worm that seemed to find us and has settled. I hope to be able to get with the erate consultant this week and get things settled.

>Wanted to check status on your 470 filing? (Let me know if you need

>possible language to use)

I would like any examples that you could give me.

>

> 2. Could you provide the handset count for Blanco?

Blanco is approx. 50 stations

>

> 3. Would like to have a call to review your LAN network, i.e. switching

>equip, models, hubs, QOS capabilities etc.

I would be glad to set that up. We will need to have our lead technician involved in that also. Let me know when is a good time for you and I will get him involved.

>

> 4. Roger and I would like to meet for a design & confirmation

>meeting (and or a possible proposal presentation if ready) the week of

>9/18, preferably Tuesday 9/20 with you and your Finance Director if

>your available?

I am sure that I can get Randy involved on any day except Tuesdays.

Sondra Adams  
Director of Technology

## **Communication Was Within Rules:**

As stated earlier, a service provider can discuss its product offering with a school district and that school district can share information with a service provider about that district, as long as the school district treats all potential vendors equally and the bid process adheres to State, local and E-Rate program rules. There is no indication that the school district did not treat all potential service providers equally. There is also no indication that the school district did not follow state, local and E-Rate program rules. As a matter of fact, USAC did not even request any competitive bid communications other than those associated with Trillion.

The communication above is simply a service provider and a school district communicating in regards to the service provider's product offering and how that product offering might fit into the school districts current infrastructure.

One item to note, in this communication, the school district does note that they *"hope to be able to get with an erate consultant this week and get things settled."* This communication

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clearly indicates the school district's intent to hire an E-Rate consultant to help them with the process. The record also indicates that, indeed, the school district did hire an E-Rate consultant.

It would be a travesty if this application were to be denied based upon a retroactive application of new rules defined in the FCC Sixth Report and Order. Trillion respectfully requests that this appeal be granted.

Sincerely,

Trillion Partners, Inc.

Attachments:

- Master Appeal Summary dated November 3, 2010 as previously filed on November 3, 2010 under ECFS Number 2010113403548
- Funding Decision Commitment Letter (FCDL)

Cc:

Ron Reich, Intel Capital

Peter Pitsch, Intel

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Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

October 21, 2010

Virginia Bryant  
Trillion Partners, Inc  
9208 Waterford Center Blvd. Suite 150  
Austin, TX 78758

Re: SPIN: 143025872  
Service Provider Name: Trillion Partners, Inc  
  
Form 471 Application Number: 498690  
Funding Year: 2006  
  
FCC Registration Number:  
  
Applicant Name BLOOMFIELD SCHOOL DISTRICT  
Billed Entity Number: 143262  
Applicant Contact Person: Steve Tenzer

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).



TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
  2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
    - Billed Entity Name,
    - Form 471 Application Number,
    - Billed Entity Number, and
    - FCC Registration Number (FCC RN) from the top of your letter.
  3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
  4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
  5. Provide an authorized signature on your letter of appeal..
- To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or the applicant(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds the Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Steve Tenzer  
BLOOMFIELD SCHOOL DISTRICT

Funding Commitment Adjustment Report  
Form 471 Application Number: 498690

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Funding Request Number:	1438436
Contract Number:	N/A
Services Ordered:	TELCOMM SERVICES
Billing Account Number:	
Original Funding Commitment:	\$215,708.08
Commitment Adjustment Amount:	\$215,708.08
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$138,156.28
Funds to be Recovered from Service Provider:	\$138,156.28

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, documentation provided by you and/or your vendor indicated that there was not a fair and open competitive bid process free from conflicts of interest. The documents provided by you and/or your service provider indicated that, prior to/throughout your contractual relationship with the service provider listed on the FRN, you were offered and accepted gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and service provider.

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Funding Request Number:	1438482
Contract Number:	N/A
Services Ordered:	INTERNET ACCESS
Billing Account Number:	
Original Funding Commitment:	\$16,239.30
Commitment Adjustment Amount:	\$16,239.30
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$13,838.33
Funds to be Recovered from Service Provider:	\$13,838.33

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, documentation provided by you and/or your vendor indicated that there was not a fair and open competitive bid process free from conflicts of interest. The documents provided by you and/or your service provider indicated that, prior to/throughout your contractual relationship with the service provider listed on the FRN, you were offered and accepted gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and service provider.